

DECISION



13145 PL-2
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Protest of HEW Contract Award]

FILE: B-196220

DATE: March 17, 1980

MATTER OF: Arthur Young & Company

DIGEST:

1. Although discussions in negotiated procurement must be meaningful, extent of discussions needed to satisfy this requirement is for contracting agency's determination and will not be disturbed unless unreasonable. It is not unreasonable to restrict discussions to business considerations when technical proposals of all offerors in competitive range are acceptable.
2. Record does not support contention that protester was told it could not revise its technical proposal while other offerors were afforded such opportunity.
3. It is not GAO's function to evaluate technical proposals. Contracting agencies have reasonable range of discretion in determining which offer should be accepted, and their determination will not be questioned unless there is clear showing of unreasonableness, arbitrary abuse of discretion, or violation of procurement statutes and regulations. No such showing has been made where revisions to business proposal in best and final offer without explanation were determined to adversely impact on acceptability of technical proposal. Further, reopening of negotiations was not required in circumstances.

Arthur Young & Company (Young) protests the award of a contract to Cresap, McCormick, Paget, Inc. (Cresap), under request for proposals (RFP) No. HRA232-DM0028(9) issued by the Health Resources Administration (HRA), Department of Health, Education, and Welfare. The RFP contemplated a cost-plus-fixed-fee contract for identifying and analyzing the factors of success that brought medical schools out of financial distress between 1972 and 1977.

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Six proposals were received and evaluated. A competitive range of three offerors, including Young and Cresap, was established. Negotiations were conducted with these three offerors. Discussions centered on business considerations since the technical proposals were acceptable and no changes were considered necessary. After receipt and evaluation of best and final offers the project officer determined that the changes made by Young so weakened its proposal as to make it technically unacceptable. A cost-plus-fixed-fee contract was awarded to Cresap based on HRA's determination that it had submitted the technically most acceptable, lowest cost proposal.

Young protested the award to Cresap based on its contention that it was prejudiced by HRA's actions in this procurement. Young states that at oral discussions it was told that its technical proposal was acceptable to perform the work specified in the RFP and that its technical approach could not be modified in its best and final submission. In spite of this, Young says that best and final offers were technically reviewed and that other offerors received the opportunity to revise or modify their technical proposals. Young also questions whether it was proper to limit discussions to the business proposals and disputes the determination that the revisions to its business proposal weakened and made its technical proposal unacceptable. It is Young's position that award should have been made to it based on a lower priced, technically acceptable submission.

The record does not support Young's contention that it was told its technical proposal could not be modified in its best and final submission. It is apparent that discussions revolved around the business proposals and that the offerors were informed that their technical proposals were acceptable. But HRA denies that offerors were told anything else with respect to their technical proposals. Where, as here, conflicting statements of the protester and the contracting agency constitute the only available evidence, we do not believe that the protester has met the burden of affirmatively proving its case. Reliable Maintenance Service, Inc.,--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337. In any event, by altering the personnel and the

amount of effort to be provided by certain persons in its best and final business proposal, Young did, in effect, revise its technical proposal as well. Moreover, there is no indication that other offerors revised their technical proposals or that there was a further review of the technical proposals, except to the extent that Young's business revisions were considered as affecting its technical proposal.

It is our view that negotiations should be conducted under competitive procedures to the extent practical and that they be meaningful in order to maximize competition. American Nucleonics Corporation, B-193546, March 22, 1979, 79-1 CPD 197. The content and extent of discussions needed to satisfy the requirement for meaningful negotiations is a matter primarily for determination by the contracting agency, whose judgment will not be disturbed unless clearly without a reasonable basis. Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD 61. In this case, all three offerors within the competitive range were determined to have technically acceptable proposals. It was reasonable, then, for HRA to restrict discussions to the business proposals. We are unable to conclude that this operated to the bias or prejudice of any offeror.

Young also contends that award should have been made to its firm based on its lower price and technically acceptable submission. HRA determined that Young's best and final offer reduced the level of expertise from its initial proposal and reduced the number of out-of-town trips and subsistence days, without explanation, much less assurance, that such reduction would not impact upon the successful completion of the project. Thus, Young's technical proposal was determined to be unacceptable. Specifically, Young reduced, by more than half, the number of partner hours to be expended; eliminated an Associate "A" position at \$15 per hour and substituted Manager "B" at \$14.65 per hour; split an Associate "B" position at \$11.75 per hour for 1,504 hours into two Associate "B" positions, one at \$11.29 per hour for 112 hours and one at \$9.50 per hour for 1,392 hours; reduced out-of-town air trips from 19 to 13; reduced out-of-town ground trips from 19 to 7; and reduced subsistence days from 60 to 45.

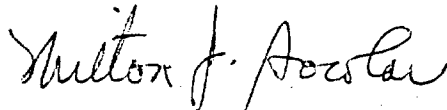
It is not the function of our Office to evaluate technical proposals. Moshman Associates, Inc., B-192008, January 16, 1979, 79-1 CPD 23. The determination of the needs of the Government and the method of accommodating such needs is primarily the responsibility of the procuring agency, which, therefore, is responsible for the overall determination of the relative desirability of proposals. In making such determinations, contracting agencies enjoy a reasonable range of discretion in determining which offer should be accepted for award, and their determinations will not be questioned by our Office unless there is a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of the procurement statutes and regulations. Audio Technical Services, Ltd., B-192155, April 2, 1979, 79-1 CPD 223.

We are unable to conclude that the evaluation of Young's best and final offer was unreasonable, an arbitrary abuse of discretion, or in violation of procurement statutes and regulations. Although in its response to HRA's administrative report Young contends that HRA made an erroneous assumption that reduction in compensation per hour meant less experienced personnel, without explanation from Young as to the effect of these changes, we believe this assumption was not unreasonable. Also, in light of the fact that the RFP stated that expertise, experience and personnel comprise 60 percent of the technical evaluation, it would be logical to reconsider whether a proposal was still acceptable when the effort of a partner has been reduced by more than half of the initial effort proposed; a position was deleted and another substituted, and a third position was divided into two positions, but no corresponding explanation of the personnel and expertise to be provided accompanied the best and final offer and there was already a higher ranked technical proposal in the range of consideration. There is no basis to question HRA's determination.

Finally, Young contends that any concerns regarding revisions to its business proposal in its best and final offer should have been resolved in "final price negotiations." Here the agency apparently determined that reopening of negotiations would

not be in the Government's best interest because the unacceptability of Young's proposal was due primarily to unexplained changes in its business proposal, negotiations would be required with all offerors and benefit primarily Young, and there was a reasonably priced, higher ranked technical proposal available for acceptance. In the circumstances, we think this was a reasonable determination. Electronic Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD 15.

Protest denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States